



POLICE DEPARTMENT

November 19, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Dirley Matias
Tax Registry No. 929445
13 Precinct
Disciplinary Case No. 2012-8523

The above-named member of the Department appeared before me on June 21, 2013, charged with the following:

1. On or about October 25, 2012, Police Officer Dirley Matias, while on-duty in New York County, after being alerted by an individual whose identity is known to the Department, that there was an intoxicated person who just entered the driver's seat of a vehicle and could possibly drive while intoxicated, failed to take any police action to investigate the allegation and/or prevent the motorist from driving.

P.G. 202-21, Page 1, Paragraphs 8, 10 & 11 DUTIES AND RESPONSIBILITIES

2. On or about October 25, 2012, Police Officer Dirley Matias, while on-duty, failed to make Activity Log entries documenting the above detailed interaction, as required.

P.G. 212-08, Page 1, Paragraph c(5) – ACTIVITY LOGS

The Department was represented by Daniel Maurer, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through her counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE PRESENTED IN MITIGATION

Respondent testified she is an 11-year member of the Department, and is currently assigned to the 13 Precinct. She has been at the 13 Precinct for six years, and prior to working at the 13 Precinct, Respondent was assigned to the 111 Precinct. Respondent has made approximately sixty-five arrests in her career and is currently on full duty status. Respondent said she has never been modified by the Department for any reason, and has never had her gun taken away. Respondent admitted that she received two Command Disciplines in her career, but never had any disciplinary charges or specifications brought against her, besides the current charges being mitigated.

At her present command, Respondent is assigned to uniform patrol, and Respondent explained her patrol sector stating, "We cover 14th Street all the way up to 30th from FDR to 7th, and we have three homeless shelters. Also, we cover Union Square where it's a grand larceny prone location. And primarily, I respond to past and in progress jobs assigned to me through 911 or by anyone who actually requests police action."

On the incident date, October 25, 2012, Respondent said she was assigned to a critical response vehicle (CRV). Respondent explained that a CRV post involves watching a certain post the whole day until you get dismissed. Respondent added that the CRV post is primarily used to protect highly sensitive areas from terrorism. Respondent stated her partner on the day of the incident was Police Officer Paul Garcia. They were

stationed at the post located right across from the United Nations on 43 Street and First Avenue. She and Garcia were supposed to be watching a Temporary Headquarters Vehicle that is off-limits to civilians.

Respondent testified that there did come a time during her tour that she was approached by a civilian, who she later learned was an undercover officer performing an integrity test targeting Garcia because he was on dismissal probation. Respondent admitted that she was there to back her partner up, but said she only spoke briefly, and Garcia was primarily talking to the undercover officer. The undercover officer informed them she believed there was a drunk individual who was about to drive a car. The undercover officer pointed across the street approximately forty feet away and indicated to Respondent and Garcia where the drunken individual was located. Respondent said she could not see anyone where the undercover was pointing, and that the undercover added that the drunken individual asked for her phone number.

Respondent testified that the conversation lasted approximately 35 to 40 seconds, and after it ended Respondent did not know where the undercover officer went. Respondent said she originally thought the undercover approached her because the undercover was annoyed the drunken individual asked for her number. Respondent said that asking for someone's number is not grounds for filing a police report for harassment. Respondent admitted that besides looking over to the area where the undercover pointed, Respondent made no other attempt to investigate the allegations the undercover made about a drunken individual driving.

Approximately 30 minutes later, Respondent was dismissed from her post, and never investigated the undercover officer's claim. Respondent conceded that in

retrospect she should have acted differently to promptly follow up on the undercover officer's allegation. Either Respondent or Garcia should have investigated further to determine, what if any action, should have been taken. Respondent said she should have made proper Activity Log entries regarding the time, date, location, and summary of the job or incident. Respondent said the duration of the encounter was irrelevant and admitted that this conversation with the undercover officer should have been in her Activity Log.

Respondent does not have any family in this country, and uses her vacation days to visit her family in Brazil. Respondent said she does not get to go every year, but she saves the 25 vacation days she gets annually for those trips. Respondent felt the penalty was excessive because the primary subject of the integrity test was Garcia and not her. Respondent stated if a similar incident transpired again she would handle it much differently.

During cross-examination, Respondent testified that when the undercover officer approached her and Garcia, Respondent was unaware it was an integrity test at the time. Both Respondent and Garcia were full-duty, and had the same responsibilities as police officers, independent of each other. Respondent reiterated when the undercover officer approached her and Garcia she thought the undercover officer was filing a claim of harassment. Respondent acknowledged that the undercover officer made an allegation that someone was intoxicated, and the undercover officer pointed out an SUV to identify where this alleged individual was at the time.

Upon further examination by the Court, Respondent said the post she and Garcia were working that day was a face-to-face relief post, and that both Respondent and

Garcia were assigned there that day. Respondent admitted that she made a bad judgment call when she did not investigate the undercover officer's allegations. Respondent said she or Garcia could have left their fixed post for a few moments to investigate the undercover officer's claim.

During redirect examination, Respondent testified that Garcia was the senior officer at the time of the incident. Garcia had one and a half more years on the job than Respondent at the time of the incident.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 1, 2002. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pleaded Guilty to failing to take police action when she was advised that an intoxicated person took the driver's seat of a vehicle and may be driving. Respondent also pleaded Guilty to failing to make an Activity Log entry regarding the above interaction.

The Assistant Department Advocate asked for a penalty of the forfeiture of 20 vacation days. Respondent argued that with respect to failing to take police action, the complainant was primarily talking to her partner and that the onus should not be on her. However, during cross-examination, Respondent acknowledged that both her and Garcia were working full duty and had the same responsibilities as police officers independent of each other. If Garcia did not take action with respect to the allegation of an intoxicated

person getting ready to drive a car, Respondent had a duty to take action, even if it consisted of walking over to the location and conferring with the driver. Likewise, Respondent failed to make an Activity Log entry regarding the complaint made to Respondent and her partner.

The Court acknowledges that Respondent did admit to her misconduct in this matter by pleading Guilty. To determine an appropriate penalty, case law was reviewed. In Disciplinary Case No. 83255/07 (August 19, 2008), an eight-year member with no prior disciplinary record having pleaded Guilty forfeited ten vacation days after being informed that a crime had occurred, failed to take proper police action, conduct a warrant check on the suspect, make Activity Log entries and prepare paperwork. In addition, Respondent in that matter informed the complainant that he would issue a summons to the alleged perpetrator of the larceny, an act which he failed to do and which he could not lawfully do since the alleged crime was not a summonsable offense. In Disciplinary Case No. 82180/06 (March 30, 2009), an eight-year member of the Department with no prior disciplinary record forfeits ten vacation days for failing to take action after a civilian complainant told him that she received a call from her son informing her that he was accosted by an individual with a knife. Respondent in that matter told the complainant that she should return to the precinct with her son.

In Disciplinary Case Nos. 84674/08 & 84676/08 (June 29, 2010), a four-year police officer and a five-year police officer with no prior disciplinary records negotiated a penalty of ten vacation days each for failing to thoroughly investigate a dispute between two individuals. In addition, Respondents neglected to prepare any paperwork for the

incident, memorialize it in their Activity Logs, make notifications, or properly safeguard a weapon (a police baton) that was involved.

Accordingly, based on Respondent's service record and the aforementioned cases, I recommend that Respondent forfeit ten vacation days.

Respectfully submitted,

C. D. P.

by Maria G. Daniels

Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials

APPROVED
DEC 02 2013
[Signature]
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER DIRLEY MATIAS
TAX REGISTRY NO. 929445
DISCIPLINARY CASE NO. 2012-8523

In 2010, 2011 and 2012, Respondent received an overall rating of 3.5 “Above Competent” on her annual performance evaluations. Respondent has received one Excellent Police Duty Medal in her career to date.

[REDACTED]

Respondent has no prior formal disciplinary record.

For your consideration.

CDD
by [Signature]
Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials